

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>DENNY CAMMARN</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 202,535
<b>IBP, INC.</b>	)	
Respondent	)	
Self Insured	)	

**ORDER**

Respondent appeals Administrative Law Judge Brad E. Avery's November 28, 2000, Order for Medical Treatment. Appeals Board Member Gary Korte has recused himself from these proceedings. Jeff Cooper has been appointed to serve in Mr. Korte's place as Appeals Board Member Pro Tem.

**APPEARANCES**

Claimant appeared by his attorney, Derek R. Chappell of Ottawa, Kansas. Respondent, a qualified self-insured, appeared by its attorney, Bradley D. Thornton of Dakota City, Nebraska.

**RECORD AND STIPULATIONS**

The record consists of the May 15, 1997, Settlement Hearing transcript, the November 17, 2000, Post Award Hearing transcript and the medical records and medical expense statements admitted into evidence by the stipulation of the parties at the post-award hearing.

**ISSUES**

This is claimant's request for post-award medical treatment brought pursuant to K.S.A. 44-510k. On September 15, 2000, claimant filed his Application for Post Award Medical.

The initial award was entered in this case by a settlement hearing held before Administrative Law Judge Floyd V. Palmer on May 15, 1997. The claim was for an October 28, 1994, right knee injury that occurred while claimant was working for the respondent. The Administrative Law Judge approved a compromise settlement award for

50 percent permanent functional impairment of claimant's right leg as set forth in the scheduled injury statute found at K.S.A. 44-510d(a)(16). Claimant retained all of his future workers compensation rights, including, but not limited to, future medical treatment and review and modification of the award.

In this post-award proceeding, claimant seeks medical treatment for an August 14, 2000, right foot injury that claimant contends occurred when his right knee gave out and he fell at home in his back yard. Claimant argues that his right foot was fractured as a direct and natural consequence of the original 1994 work-related right knee injury.

After the November 17, 2000, post-award hearing, the Administrative Law Judge found claimant's right foot injury was the natural consequence of his 1994 work-related right knee injury. The Administrative Law Judge granted claimant's request for medical treatment and also ordered respondent to pay as authorized medical the past medical bills admitted into evidence at the post-award hearing.

On appeal, respondent contends claimant failed to prove his fall at home on August 14, 2000, that injured his right foot was a direct and natural consequence of claimant's 1994 work-related right knee injury. Respondent argues the medical reports of Dean K. Wampler, M.D., and Michael T. O'Neil, M.D., admitted into evidence at the post-award hearing, prove that claimant's August 14, 2000, right foot injury is not the natural and probable consequence of claimant's 1994 work-related right knee injury. Respondent requests the Appeals Board to reverse the Administrative Law Judge and deny claimant's request for medical treatment for the August 14, 2000, right foot injury.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments contained in the parties' briefs, the Appeals Board finds that the Administrative Law Judge's Order for Medical Treatment should be affirmed.

On October 28, 1994, while claimant was working for the respondent at its Emporia, Kansas, plant, he injured his right knee. Respondent provided medical treatment for the injury and eventually on August 25, 1995, orthopedic surgeon Bradley W. Bruner, M.D., performed right knee arthroscopy surgery. The surgery was for a partial medial meniscectomy and partial synovectomy for claimant's chronic synovitis condition.

Dr. Bruner found claimant had reached maximum medical improvement and released claimant to return to work with the restrictions included in the functional capacity evaluation. Dr. Bruner rated claimant with a 50 percent permanent functional impairment of the right leg. The settlement award was based on Dr. Bruner's 50 percent functional impairment rating of the right leg, a scheduled injury.

Admitted into evidence at the settlement hearing are three letter reports from Dr. Bruner to the respondent concerning claimant's permanent functional impairment rating and work restrictions. Those letter reports were written in July 1996, August 1996 and September 1996. The opinions expressed by Dr. Bruner in those letter reports are his opinions following a year of treating the claimant after the August, 1995, arthroscopy surgery. Dr. Bruner does not make a reference in those letter reports that claimant's resulting disability contains a psychological component along with the physiological component.

After the May 15, 1997, settlement award, respondent had claimant examined and evaluated on October 30, 1997, by occupational and environmental medicine physician, Dean K. Wampler, M.D. At that time, claimant had continuing complaints of right knee pain and swelling. Additionally, claimant complained that his right knee buckled or gave out when he placed weight on the right leg which caused him to fall. Claimant used a cane in an effort to prevent the falls. After Dr. Wampler reviewed claimant's medical treatment records and conducted a physical examination of claimant, he concluded that claimant's presentation and behavior may represent a problem sometimes referred to as conversion reaction or hysteria. The doctor found no objective findings to account for the dramatic symptoms claimant portrayed.

On February 15, 1999, respondent again had claimant examined and evaluated, but this time by Michael T. O'Neil, M.D., an orthopedic surgeon located in Omaha, Nebraska. At that time, claimant continued to experience severe and constant pain, swelling and spasms in his right leg. Claimant also provided Dr. O'Neil with a history of his right knee giving out and causing him to fall. Claimant was still required to walk with a cane and was forced to occasionally use a wheelchair. After reviewing claimant's previous medical records and conducting a physical examination of claimant, Dr. O'Neil did not have an explanation for claimant's physical complaints and his inability to stand and walk on his right leg without it collapsing or jerking. Dr. O'Neil concluded claimant's symptoms and physical findings suggested functional overlay and conversion hysteria or possible malingering. But, Dr. O'Neil did think claimant had a permanent functional impairment of the right lower extremity. Further, Dr. O'Neil seriously doubted whether claimant would benefit from any psychiatric evaluation or treatment and he did not have any further recommendations for orthopedic treatment.

At the November 17, 2000, post-award hearing, claimant testified he walked outside of his home on August 14, 2000, to see his dog and his right knee gave out causing him to fall on his ankle and foot. Claimant testified his right knee had remained symptomatic since his 1994 knee injury and he was required to walk with a cane. But claimant testified even while walking with the cane his right knee would give out on average of approximately two times per day in the last year.

Claimant testified he did not immediately seek medical treatment for his right ankle injury because he thought the injury was only a sprain. Because the injury did not improve, on August 24, 2000, claimant sought medical treatment at a local clinic located in his home town of Auburn, Nebraska.

On August 24, 2000, claimant first saw Jeffrey G. Mead, M.D., for his injured ankle. Claimant gave Dr. Mead a history of his right knee going out on August 14, 2000, while he was at home which caused him to fall and injury his right ankle. X-rays were taken and showed a non-displaced fracture of the proximal 5th metatarsal going through the joint line. The medical diagnosis was, therefore, a fractured right foot instead of a right ankle. Claimant's right foot was then placed in a CAM walker, medication was prescribed and claimant was referred to see Steven V. Hagan, M.D., who is an orthopedic surgeon in the same group of orthopedic physicians as Dr. O'Neil, who examined claimant previously on February 15, 1999.

At the time of the November 17, 2000, hearing, claimant had seen Dr. Hagan on three separate occasions and continued under Dr. Hagan's care and treatment. As of November 1, 2000, the latest radiological report showed an unhealed, proximal fifth metatarsal base fracture. Dr. Hagan instructed claimant to continue to use the CAM walker and to return in four weeks.

Respondent argues that Dr. Wampler, who examined and evaluated claimant in 1997, and Dr. O'Neil, who examined and evaluated claimant in 1999, both concluded they could not find a physiological correlation between claimant's 1994 right knee injury and his current symptoms of his right knee buckling and giving out. Both physicians attributed the cause of claimant's right knee to buckle and give out to a significant degree of functional overlay or hysteria conversion and not a physiological condition. The respondent, therefore, contends that since the original settlement award did not contain proof of a psychological condition, then claimant has not proven a relationship between the 1994 work-related right knee injury and the August 14, 2000, fall and resulting right foot injury.

Claimant, on the other hand, argues that the Appeals Board should affirm the Administrative Law Judge's Order for Medical Treatment. Claimant contends he presented evidence through his testimony that following the 1994 work-related right knee injury and subsequent 1995 surgery, his right knee remained symptomatic and would, on a regular basis, buckle and give out causing claimant to fall. Thus, claimant argues that the August 14, 2000, fall and resulting right foot injury was not a separate, intervening accident but was the direct and natural consequence of the 1994 work-related right knee injury.

Every natural consequence of a compensable injury is also compensable, even a new and distinct injury, if it is a direct and natural result of the original compensable injury.<sup>1</sup> Here, claimant's original work-related 1994 right knee injury continued to be symptomatic and continued to buckle and give out under claimant's own weight. On August 14, 2000, claimant's right knee gave out while claimant was at home not due to a separate intervening accident but as the direct and natural consequence of the primary work-related 1994 right knee injury.<sup>2</sup> Thus, the Appeals Board concludes claimant's right foot injury is compensable.

The Appeals Board finds this conclusion is not only supported by claimant's testimony but is also supported by claimant's treating physician Dr. Bruner's 1996 opinions. After the 1995 surgery, Dr. Bruner followed claimant for approximately one year. After he determined claimant had met maximum medical improvement, Dr. Bruner assessed claimant with a substantial 50 percent permanent loss of function of the right leg. The Appeals Board also finds it is significant that Dr. Bruner made no findings that claimant's permanent disability rating contained a psychological component, in contrast to the later opinions of the two physicians employed by the respondent to examine and evaluate the claimant.

The respondent, in its brief before the Appeals Board, also for the first time listed the Administrative Law Judge's December 11, 2000, Order for Compensation as part of the record on appeal. That particular order awarded attorney fees to claimant's attorney in the amount of \$1,149.20. But the Appeals Board concludes respondent did not file its brief noting the Administrative Law Judge's December 11, 2000, Order until January 4, 2001, and respondent's brief made no other reference to the Order. Therefore, the Appeals Board finds respondent failed to request review by the Appeals Board of the Administrative Law Judge's December 11, 2000, Order for Compensation within 10 days as required by statute.<sup>3</sup>

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Brad E. Avery's November 28, 2000, Order for Medical Treatment should be, and is hereby, affirmed. But, the respondent's appeal of Administrative Law Judge Brad E. Avery's December 11, 2000, Order for Compensation is dismissed.

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<sup>1</sup> See Adamson v. Davis Moore Datsun, Inc., 19 Kan. App.2d 301, Syl. ¶ 6, 868 P.2d 546 (1994).

<sup>2</sup> See Frazier v. Mid-West Painting, Inc., 268 Kan. 353, 995 P.2d 855 (2000) and Gillig v. Cities Service Gas Co., 222 Kan. 369, 564 P.2d 548 (1977).

<sup>3</sup> See K.S.A. 44-551(b)(1).

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 2001.

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BOARD MEMBER PRO TEM

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BOARD MEMBER

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BOARD MEMBER

c:     Derek R. Chappell, Ottawa, KS  
       Bradley D. Thornton, Dakota City, NE  
       Brad E. Avery, Administrative Law Judge  
       Philip S. Harness, Director